

1 BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
2 JAMES G. TOUHEY, JR.
Director, Torts Branch
3 PHILIP D. MACWILLIAMS
4 D.C. Bar No. 482883
Trial Attorney
5 E-mail: Phil.MacWilliams@usdoj.gov
6 U.S. Department of Justice
Civil Division, Torts Branch
7 Benjamin Franklin Station, P.O. Box 888
8 Washington, DC 20044
Telephone: (202) 616-4285
9 Facsimile: (202) 616-5200
10 Attorneys for the United States of America

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

13
14 C.M., on her own behalf and on behalf of
her minor child, B.M.; L.G., on her own
15 behalf and on behalf of her minor child,
B.G.; M.R., on her own behalf and on
16 behalf of her minor child, J.R.; O.A., on her
17 own behalf and on behalf of her minor
child, L.A.; and V.C., on her own behalf
18 and on behalf of her minor child, G.A.,

19 Plaintiffs,

20 v.

21 United States of America,

22 Defendant.
23
24

No. 2:19-CV-05217-SRB

**MOTION TO SEAL THE
UNITED STATES' MOTION
FOR SUMMARY JUDGMENT**

25 Pursuant to LRCiv 5.6, the United States moves this Court to seal its lodged
26 Controverting and Supplemental Statement of Facts ("Controverting Statement of Facts")
27 and accompanying Exhibit D. Exhibit D contains excerpted deposition testimony from
28

1 former U.S. Customs and Border Protection (“CBP”) Commissioner Kevin McAleenan.
2 Additionally, the text of the Controverting Statement of Facts includes a direct quote from
3 Plaintiffs’ Exhibit 9, *see* ECF 379-3, which the United States, previously moved to seal. *See*
4 ECF 380. Plaintiffs oppose the filing of Exhibit D under seal.

5
6 For dispositive motions, like those for summary judgment, a court will grant a motion
7 to seal if there are “compelling reasons” for doing so. *See Kamakana v. City and County of*
8 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Under the compelling reasons standard, the
9 court must “‘conscientiously balance the competing interests’ of the public and the party
10 who seeks to keep certain judicial records secret.” *Id.* at 1179 (quoting *Foltz v. State Farm*
11 *Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). In the context of this litigation,
12 this Court has assessed the deliberative process privilege and, in some instances, has ordered
13 disclosure to Plaintiffs material protected by the deliberative process privilege because this
14 Court determined that Plaintiffs’ need for the material overcame the privilege. In
15 considering previous sealing motions, this Court held that material protected by the
16 deliberative process privilege was “ordered disclos[ed] pursuant to the Protective Orders
17 requiring the parties to maintain the confidentiality of these deliberative documents *pre-*
18 *trial.*” Dec. 8, 2022 Order, ECF 328 (emphasis added). Indeed, in multiple discovery
19 motions, Plaintiffs have relied on the fact that the “protective order[] would prevent public
20 disclosure” in support of their argument that their need for deliberative material outweighs
21 the United States’ interests. *C.M.* ECF 120 at 7 (internal citations omitted); *see also C.M.*
22 ECF 184 at 8 (“[A]ny concerns that production of the withheld information could hinder
23 frank and independent discussion are mitigated by the protective order.”) (internal citations
omitted).

24 There are compelling reasons to seal Exhibit D. Exhibit D is an excerpt from the
25 deposition testimony of former U.S. Customs and Border Protection (“CBP”) Commissioner
26 Kevin McAleenan. It contains sensitive, pre-decisional deliberations, addressing the
27 development of immigration policy. In Exhibit D, the deponent describes pre-decisional
28 deliberations and discussions which occurred during a meeting held on February 14, 2017.

1 The deponent's perspectives and descriptions of this closed, high-level meeting have not
2 been released to the public. Because of the concern of chilling candid discussion and
3 deliberation among employees of federal agencies and law enforcement concerns, there are
4 compelling reasons to seal Exhibit D. Finally, for the reasons set forth in its previous Motion
5 to Seal, there are compelling reasons to seal the direct quote to Plaintiffs' Exhibit 17
6 contained in the Controverting Statement of Facts. *See* ECF 380.

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8 For the foregoing reasons, the United States respectfully requests that this Court enter
9 an order sealing the Exhibit D and its lodged Controverting Statement of Facts.

10 Submitted this 24th day of April 2023.

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12 BRIAN M. BOYNTON
13 Principal Deputy Assistant Attorney General

14 JAMES G. TOUHEY, JR.
15 Director, Torts Branch

16 s/ Phillip D. MacWilliams
17 PHILIP D. MACWILLIAMS
18 D.C. Bar No. 482883
19 Trial Attorney
20 E-mail: Phil.MacWilliams@usdoj.gov
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24 Washington, DC 20044
25 Telephone: (202) 616-4285
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27
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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants:

s/ Phillip D. MacWilliams
Phillip D. MacWilliams
Attorney for United States of America